

Citation: *P.S. Sidhu Trucking Ltd. v. Garvice*,
2023 YKSM 2

Date: 20230213
Docket: 22-S0004
Registry: Whitehorse

SMALL CLAIMS COURT OF YUKON
Before His Honour Judge Phelps

P.S. SIDHU TRUCKING LTD.

Plaintiff

v.

JOHN GARVICE

Defendant

Appearances:
Paramjit Sidhu
John Garvice

Appearing on behalf of the Plaintiff
Appearing on his own behalf

REASONS FOR JUDGMENT

[1] The matter before me for trial is an allegation of breach of contract brought by P.S. Sidhu Trucking Ltd. ("Sidhu Trucking"), as represented by Paramjit Sidhu, against John Garvice. The claim is for an unpaid invoice for equipment rental in the amount of \$15,750.00. Mr. Sidhu was the only witness on behalf of the plaintiff. Mr. Garvice testified on his own behalf as the only witness for the defence.

Facts

[2] Mr. Sidhu is the President of Sidhu Trucking and runs the day-to-day operations of the company. Mr. Garvice was employed by Sidhu Trucking for a period of seven years, ending in October 2021. The employment was seasonal. Mr. Garvice was a job

site supervisor for the first six years, and then worked delivering equipment to job sites in 2021.

[3] In 2018, Mr. Garvice purchased a piece of property near the City of Whitehorse. His intention was to clear the property and build a house. He approached Mr. Sidhu, in 2018, and asked if he could use Sidhu Trucking's equipment to prepare the property for building his new house. The work included clearing trees, digging a four-foot crawl space, preparing a foundation, digging a utilities trench, and spreading gravel.

[4] Mr. Sidhu initially testified that the arrangement he made with Mr. Garvice was in 2020. However, he did not dispute Mr. Garvice correcting the date to 2018. According to Mr. Sidhu, Mr. Garvice requested to use the equipment, stating that he would keep track of the use and they would "settle up", which I understood to mean pay for the use of the equipment. Mr. Sidhu expected Mr. Garvice to come to him after he was finished the work and sort out the payment for use. Mr. Garvice never provided Mr. Sidhu with the accounting of equipment use.

[5] Mr. Garvice testified that when he approached Mr. Sidhu about using the equipment, Mr. Sidhu said, "take it and get the job done". Mr. Garvice's account of the conversation is that there was no discussion regarding the cost for using the equipment or the requirement to "square up", which I understood to mean pay for the use of the equipment, although Mr. Garvice testified that he would not have objected to doing so if asked by Mr. Sidhu at the time. Mr. Garvice used various pieces of Sidhu Trucking's equipment over the 2018, 2019, and 2020 building seasons. At no point did Mr. Sidhu require him to account for the equipment use or pay for the use.

[6] According to Mr. Sidhu, in the fall of 2021, Mr. Garvice again requested to use Sidhu Trucking's equipment, this time for the purpose of some logging-related work. Mr. Sidhu told him they would first have to "settle up" for the use of equipment on his property. He testified that Mr. Garvice became very angry about having to pay for the previous equipment use and quit his job the next day. Mr. Garvice testified that he did have a conversation about using Sidhu Trucking's equipment for logging-related activities but denies there was any conversation about paying for the previous equipment use. He did quit his job with Sidhu Trucking, but that was at a later date and was unrelated to that conversation.

[7] Mr. Sidhu sent an invoice to Mr. Garvice in January 2022, in the amount of \$15,000 plus \$750 tax, for a total of \$15,750. Mr. Sidhu testified that he viewed the work done on Mr. Garvice's property and estimated the value to be \$30,000. He accounted for the fact that Mr. Garvice was operating the equipment himself and cut the estimate in half, which he considered to be fair. In addition to the cost of using the equipment, the invoice included the cost of gravel provided by Sidhu Trucking for the foundation work. Mr. Sidhu could not testify to the amount of time that Sidhu Trucking's equipment was used on the property, or to the amount of gravel provided by Sidhu Trucking.

[8] According to Mr. Garvice, he did use Sidhu Trucking's equipment while working on his property over the years in question, and he did receive some gravel from Sidhu Trucking. He sat down with his wife prior to trial and estimated the equipment usage to be about 40 hours of time, and that he received four loads of gravel.

The Law of Contract

[9] The British Columbia Supreme Court summarized the test to determine if a contract exists in *Malaspina Coach Lines Ltd. v. Anani*, 2003 BCSC 700, at paras. 5 and 6, as follows:

5 In order for there to be a legally enforceable contract, there must be an offer, acceptance, and consideration. An offer means that one party offers to another party a willingness to enter into a contract on certain terms. Acceptance means that the other party to whom the offer was made, accepts the offer as made. Both parties must evidence an intention to contract and agree on certain terms. Agreement by BOTH parties on the terms forms the foundation of an enforceable contract. The same principles apply to varying a term of a contract; there must be evidence that BOTH parties agreed to the variation.

6 The party relying on a contract must prove on a balance of probabilities the terms of the contract that it seeks to enforce. To put it another way: the party alleging a certain term of a contract, must satisfy the court that the existence of that term is more probable than not. If the judge finds that the evidence is so evenly divided, or he is not sure who to believe, then the burden of proof has not been discharged.

[10] On the facts before me, I am not satisfied that that there was a contract formed between Sidhu Trucking and Mr. Garvice. Even if I were to accept Mr. Sidhu's version of events over Mr. Garvice's version of events, an agreement to "account for the time and settle up later" is not specific enough to constitute a contract. This is particularly so given that there was no agreement on the consideration to be applied for the use of the equipment.

The Law of *Quantum Meruit*

[11] The British Columbia Supreme Court summarized the law of *quantum meruit* in *Aerovac Systems Ltd. v. Darwin Construction (Western) Ltd.*, 2010 BCSC 564, at paras. 44 and 45, as follows:

44 Where a benefit is conferred on another, at the request of the other and is accepted, the person conferring the benefit may be entitled to reasonable payment on the basis of *quantum meruit*. That is the case here.

45 In *Infinity Steel Inc. v. B & C Steel Erectors Inc.*, 2009 BCSC 1053 the court set out the applicable law in the context of a construction dispute involving claims that there was either a fixed price or cost-plus contract:

[48] In *Greenhill Properties (1977) Ltd. v. Sandcastle Recreation Centre Ltd.*, 39 C.L.R. (2d) 205, [1998] B.C.J. No. 1123 (S.C.), at para. 109 ["Greenhill"], the court referred to the decision in *Jamieson Construction Co. v. Lacombe*, [1926] 2 D.L.R. 653, [1926] 1 W.W.R. 628 (Alta. C.A.), in which the court held that:

The amount to which a contractor is entitled on a *quantum meruit* is the value of the work from the point of view of the value of the services rendered by him, not the benefit to the person for whom the work is done. He is entitled to recover as 'cost', the cost and expenses which he actually incurred in doing the work insofar as they were reasonable in amount and reasonably and justifiably incurred with regard to all the circumstances and conditions of the time and place and relationship of the parties and otherwise existing from time to time from the beginning of negotiations for the doing of the work to its conclusion. The burden of proving that the disbursements were reasonable and otherwise proper is on him.

[49] The court, in *Golder Associates Ltd. v. Mill Creek Developments*, 2004 BCSC 665, [2004] B.C.J. No. 998 (S.C.), at para. 29 ["Golder"], sets out the general principles used to assess the amount of a *quantum meruit* award:

[29] The Court's task, therefore, is to determine the value of the services rendered, by considering the reasonable costs and expenses incurred in performing the services, having regard to the amount of reasonable variance from the estimate in all the circumstances between the parties.

...

[12] Mr. Sidhu's cost estimate for the foundation work on Mr. Garvice's property is based on his extensive experience in that line of work, and his observations of the property. I do not have any concerns with his estimated value of work to the property being \$30,000. However, Mr. Sidhu has no knowledge of the amount of time Mr. Garvice used Sidhu Trucking's equipment on the improvements. Mr. Garvice testified that over the years that he worked on the property, he had the assistance of friends and family, as well as the equipment of friends and family, for the work. Mr. Sidhu was unable to refute the evidence of Mr. Garvice in this regard.

[13] Mr. Sidhu's lack of accounting and inability to provide reliable evidence in support of the damages sought, leaves this Court in a difficult position. The impact of the lack of evidence in support of damages was addressed by the Ontario Superior Court of Justice in *9071-5392 Quebec Inc. (c.o.b. Construction Phoenix) v. Katsoulis* (2007), 63 C.L.R. (3d) 69 (Ont. Sup. Ct.), at paras. 55 to 57, as follows:

55 The case before me does not involve contingencies, which render the assessment of damages imprecise and speculative, as was the case in the *Penvidic Contracting and Chaplin v. Hicks, supra*, cases. In this case, I am not dealing with a situation where it was impossible to calculate damages accurately due to the nature of the damages or the conduct giving rise to such losses, but rather the parties have both decided not to introduce any business records including any invoices, any receipts for payments made, any copies of any cheques given, or to obtain any opinion from a qualified expert on the value of the work completed, the

value of the additional work performed under the oral agreement, to establish the cost to complete unfinished work, to specify and establish the cost to correct deficiencies, to introduce any financial statements, any monthly income and expense statements for the restaurant, or to introduce any opinion evidence on the loss of profits caused the defendant due to the delay in completing the construction.

56 In paragraph 75 of the *Goldfarb* decision, *supra*, the Court of Appeal discusses the *Pervidic* decision and concludes that it stands for the following proposition:

... that it is a well established principle that where damages in a particular case are by their inherent nature difficult to assess, the court must do the best it can. That it is not to say however that a litigant is relieved of his/her duty to prove the facts upon which the damages are estimated. The distribution drawn in the various authorities, as I see it, is that where the assessment is difficult because of the nature of the damage proved, the difficulty of assessment is no ground for refusing substantial damages even to the point of guess work. However, where the absence of evidence makes it impossible to assess damages, the litigant is entitled to nominal damages at best. (emphasis mine)

57 I adopt the Court of Appeal's reasoning as quoted above and I find that the principles in the above authorities may be summarized as follows: Where the assessment of damages is difficult because of the nature of damages to be proved, or where contingencies are involved, the difficulty of assessment or the existence of contingencies is not a reason for refusing to award substantial damages, even to the point of guesswork. However, if the absence of evidence, which was reasonably available to a party to produce, makes it impossible to assess damages, the litigant is entitled to nominal damages at best.

[14] Mr. Sidhu left it to Mr. Garvice to keep track of his time using the equipment, and Mr. Garvice provided the estimate of 40 hours. Mr. Sidhu did not provide a breakdown of the rental cost for each type of equipment he asserts Mr. Garvice used, instead relying on a Rental Rate Sheet from Total Trac Rentals, which he filed in an affidavit. The rental rates vary from \$50 per day to \$500 per day, depending on the equipment in question. Mr. Garvice suggested a fair cost for the 40 hours of equipment use would be

\$1,500. With no evidence before me to suggest that his accounting does not provide an accurate representation of the equipment use, I accept the amount put forward by Mr. Garvice, representing \$37.50 per hour.

[15] Mr. Sidhu also testified that Mr. Garvice used Sidhu Trucking's gravel and delivered it with Sidhu Trucking's trucks which would amount to \$400 per load to the location of the property. However, Mr. Sidhu did not know how many loads of gravel Mr. Garvice used for the job. Mr. Garvice testified that he received gravel from several sources for the work, including four loads from Sidhu Trucking. Mr. Garvice suggested that the fair value would be an additional \$1,500. On this item, I accept the cost estimate provided by Mr. Sidhu and attribute the value at \$1,600.

[16] On the evidence before me, I find that Sidhu Trucking is entitled to \$3,100 on a *quantum meruit*, calculated as:

1. \$1,500 for the 40 hours of time Mr. Garvice used Sidhu Trucking's equipment for the property improvements; and
2. \$1,600 for the four loads of gravel from Sidhu Trucking delivered to his property.

[17] As Sidhu Trucking was successful in this action, I award costs as follows:

1. Fee for filing a claim:	\$100.00
2. Service of the Claim:	\$ 52.50
3. Fee for filing a Notice of Trial:	<u>\$ 50.00</u>
TOTAL:	<u>\$202.50</u>

[18] The total judgment is for \$3,302.50, with post-judgment interest pursuant to the *Judicature Act*, RSY 2002, c. 128, from January 9, 2023.

PHELPS T.C.J.